

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**EADS NORTH AMERICA DEFENSE
TEXT AND SERVICES, INC.,**

Plaintiff ,

v.

**X TECHNOLOGIES, INC. and
TERRY SMITH,**

Defendants.

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CIVIL ACTION NO.

SA-07-CV-0224 FB (NN)

ORDER DENYING SECOND EX PARTE MOTION

The matter before the Court is plaintiff's second ex parte emergency motion for expedited discovery and entry of a protective order (docket entry 11).

Through this motion plaintiff repeats its request that an order be entered ex parte which shortens the time for responding to requests for production to 5 days from the date of receipt of the request, that the parties be permitted to serve deposition notices which require testimony of parties upon 5 days notice, and that the Court enter a protective order which essentially tracks the standard order used in the Western District of Texas. The motion was initially denied as being presented without authority and without a certificate of conference. Additionally, I noted that the motion was premature in that the parties had not yet conducted their Rule 26(f) conference.

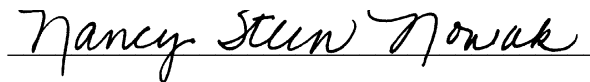
Although the current motion includes citation to three authorities, none of those authorities compel granting of the relief requested here without the participation of the defendants. In the cases which plaintiff cited in support of its second motion, either defendants had appeared or the plaintiff/movant sought expedited ex parte discovery from non-parties in order to determine the

identity of the proper defendants. This case is distinguishable from the cited cases in these important respects.

Plaintiff here fails to show good cause for the entry of an order without defendants being given notice and an opportunity to be heard. In this regard, I note that defendants have now been served and plaintiff is encouraged to attempt to negotiate with defendants to obtain an agreement regarding the relief sought through the ex parte motions.

For these reasons, the second ex parte motion is ORDERED DENIED.

SIGNED on March 23, 2007.

A handwritten signature in cursive script, reading "Nancy Stein Nowak", is written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE